

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION**

No. 7:10-CV-00098-H

LEXON INSURANCE COMPANY,

Plaintiffs,

v.

JAMES J. BOVINO,
TOWN & COUNTRY DEVELOPERS, INC.,
and TOWN & COUNTRY DEVELOPERS AT
WILMINGTON, INC.,

Defendants.

**MEMORANDUM &
RECOMMENDATION**

This matter is before the Court on the Plaintiff's motion for default judgment [DE-16] and supplemental affidavit [DE-17]. A hearing on the motion was held on September 21, 2011 to further develop the record.

It appears to the Court upon the pleadings that this is an action for damages arising out of Plaintiff's payment of a judgment on two bonds for which Defendants were principals and/or guarantors, and on which Defendants have failed to pay monies owed to Plaintiff; that personal service was had on the Defendants; that the Court has jurisdiction over the subject matter of this action; that Defendants have failed to plead or appear in the time allowed by law; that default has been entered and that Defendants are liable, jointly and severally, to Plaintiff for damages as demanded by Plaintiff.

Therefore, it is **RECOMMENDED** that the Plaintiff have and recover of the Defendant damages in the total amount of \$4,594,106.78; together with pre-judgment interest at the state prejudgment interest rate of 8% on the amount of the bonds totaling \$3,922,844.74 from May 21,

2010, the date of filing of the Complaint under North Carolina law; and with interest continuing at the federal legal judgment rate from the date of Judgment.

The Clerk shall send copies of this Memorandum and Recommendation to counsel for the Plaintiffs and to the Defendants, who have fourteen (14) days from the date of receipt to file written objections. Failure to file timely written objections shall bar an aggrieved party from receiving a de novo review by the District Court on an issue covered in the Memorandum and, except upon grounds of plain error, from attacking on appeal the proposed factual findings and legal conclusions not objected to, and accepted by, the District Court.

This the 23rd day of September, 2011.

A handwritten signature in black ink, appearing to read 'David W. Daniel', written over a horizontal line.

DAVID W. DANIEL
United States Magistrate Judge